IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos 800 to 807 of 2002
with
CIVIL APPLICATION Nos.4900, 4874, 4902 and 4901 of 2002
in
SPECIAL CIVIL APPLICATION Nos.800, 801, 804 and 805 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

MAMTA K ASRANI

Appearance:

MR PR ABHICHANDANI, AGP for Petitioner - State, in Special Civil Application Nos.800 to 807 of 2002
MR BM MANGUKIYA for Respondent, in Special Civil Application Nos.800, 801, 804 and 805 of 2002 with Civil Application Nos.4900, 4874, 4902 and 4901 of 2002.

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 22/07/2002

ORAL JUDGEMENT

#. All these matters are disposed of by this common judgment, as they are arising out of the impugned common judgment and order dated 21st August, 1997 passed by the Additional Chief Secretary (Appeals), Revenue Department, Government of Gujarat, Ahmedabad, whereby the Revisional Authority partly allowed the Revision Application No.8 of 1996 and fully allowed the remaining Revision Application Nos.6 to 12 of 1996. These impugned orders have been challenged by the State of Gujarat in all these petition in 2002.

#. There is a land admeasuring 5100 sq.mtrs. situated in Final Plot No.200, of T.P.Scheme No.29 of village Wadaj, Taluka-City Ahmedabad, which was granted to one Ashutosh Co-operative Housing Society Limited for constructing residential houses for its members. The possession thereof was handed over on 27th September, 1990 on receipt of Rs.2,75,400-00 [Rs.Two Lacs Seventy Five Thousand Four Hundred Only] at the rate of Rs.54-00 per sq.mtr. towards the possessive right on the terms and conditions made therein in the grant order. Thereafter, an application was made by the Society for the partition of the Society into "Part-I and Part-II", which was also granted by the Competent Authority. However, the said permission was granted with certain conditions. There was a breach of Condition Nos.1, 4 and 6, of the grant. Therefore, a show cause notice dated 18th July, 1994 was issued and ultimately by an order dated 20th November, 1994, the society was directed to stop nonresidential use and another activities of the society. The society was to comply with the requirement within 12 [twelve] months. On 16th February, 1996, an order was passed for vesting of the land in question to the Government with the direction, to issue necessary show cause notice to the society and its members [Annexure-A dated 18th July, 1994 and the order dated 20th November, 1994 respectively and Annexure-B an order dated 16th February, 1996].

#. Being aggrieved by that order at Annexure-B, the society and its members filed Revision Application No.5 to 12 of 1996 before the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad. As stated earlier, all the aforesaid Revision Application Nos.6 to 12 of 1996 were fully allowed and Revision Application No.5 of 1996 was partly allowed by the Revisional Authority by its impugned common judgment

and order dated 12st August, 1997. This impugned common judgment and order is challenged in these petitions by the State of Gujarat through the Collector at Ahmedabad.

#. Mr.P.R.Abhichandani, learned AGP for the petitioner State of Gujarat, in all these petitions has vehemently submitted that the impugned common judgment and order dated 21st August, 1997 passed by the Additional Chief Secretary (Appeals) - Revisional Authority is contrary to the provisions of the existing Government Resolutions. He has submitted that the Revisional Authority, while passing the impugned order did not consider the provisions contained in para-9 of the Government Resolution dated 28th March, 1989, wherein it is clearly mentioned that the Government can regularize the irregularities by collecting the premium amount. Mr.Abhichandani has further submitted that in view of the Government Resolution dated 28th March, 1989 [Annexure-C], no construction can be put up by the society without prior permission of the Collector. He has submitted that in the instant case, the society has constructed 35 shops in the land in question in breach of the resolution [Annexure-C] by making use of the same for commercial purposes instead of residential purposes. He has further submitted that the Revisional Authority completely failed to appreciate that there was a clear breach of Condition Nos.1, 4 and 6, while granting permission. As per Condition No.1, the land in question was to be used only for a residential purpose and not for any other purpose. However, there was a clear breach of it by the members of the society by converting the residential premises into commercial premises. As per Condition No.4, the plan was to be approved by the appropriate authority and the construction was to be made accordingly as per the scheme approved by appropriate authority within two months from the date of receipt of the possession of the land in question and as per Condition No.6, the society has to start construction within six months from the date of receipt of the possession and complete the construction within two years thereof. All these aspects have not been considered by the Revisional Authority, while allowing all the Revision Applications except one partly, by its impugned common judgment and order dated 21st August, 1997. He has, therefore, submitted that the impugned common judgment and order be quashed and set aside.

#. Mr.Abhichandani, learned AGP for the petitioner State of Gujarat has further submitted that as per Condition No.8, before making any commercial use of the said land, they have to obtain permission from the Collector and

failing which, the land had to be vested in the Government without any compensation. In view of the clear breach of Condition No.8, the order was passed on 16th February, 1996. But the Revisional Authority, without taking into consideration the existing rules and regulations, and Government policy as laid down in resolution dated 28th March, 1989, allowed the Revision Applications by the impugned common judgment and order.

#. However, Mr.B.M.Mangukia, learned advocate appearing for the respondents in 4 petitions, out of 7 petitions, has submitted that all these petitions suffer from the vice of acquiescence, delay and latches, which totally remained unexplained by the petitioners in all these petitions. He has submitted that the impugned common judgment and order was passed way back on 21st August, 1997 and the same came to be challenged only in 2002. Such a gross delay is sufficient to dismiss all these petitions.

#. Mr.Abhichandani, learned AGP for the respondent State of Gujarat has relied upon the judgment of the Hon'ble Supreme Court in the case of Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others, reported in 1987 S.C. 1353. He has further submitted that when there important question is involved in the petitions, then delay is hardly of any importance. He has further submitted that having fully satisfied, on the merits of the cases, two Honourable Single Judges of this Court straightway admitted all these petitions. Therefore, now it is not open to the respondents to raise plea about the gross delay and latches.

#. There cannot be any quarrel with the principles laid down by the Hon'ble Supreme Court. It is true that the petitions were straightway admitted by two Honourable Judges of this Court. But in my considered opinion, without issuing notice to the otherside, if the matters were admitted then the respondents cannot be deprived of their right to raise contention regarding gross delay and latches in filing the petitions. If, the notice was issued in all these petitions, before admitting the same, then the respondents could have certainly raised their plea and perhaps, the Court might have entertained the contention regarding gross delay and latches at the time of final hearing stage.

Therefore, I am of the opinion that the respondents cannot be deprived of their rights of raising the gross delay and latches. In all these cases, there is a gross delay of 4 years in challenging the common

impugned order, for which no explanation whatsoever is offered by the petitioner - State, therefore, I am of the considered opinion that on the ground of gross delay and latches of 4 years, which totally remained unexplained, all these petitions are required to be dismissed. However, for abundant caution, I have also gone through the impugned common order passed by the authority.

#. Having gone through the impugned common judgment and order dated 21st August, 1997 passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad, I am of the considered opinion that while passing the order, the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad has not committed any illegality, which is required to be corrected by this Court in its jurisdiction under Article 227 of the Constitution of India. In the case of Mohd. Ynus v. Mohd. Mustaqim and others, reported in AIR 1984 S.C. 38, the Hon'ble Supreme Court has held that the powers of the High Court under Article 227 are very narrow and limited. Unless and until, it is pointed out that the jurisdictional error is committed or grave injustice is done then only this Court can exercise its power, otherwise not.

##. In view of the above discussion, I am fully convinced that while passing the common impugned order the authority has done substantial justice, therefore, I do not see any reason to interfere with the impugned common judgment and order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad, in my jurisdiction either under Articles 226 or 227 of the Constitution. Accordingly all these petitions fail and are hereby dismissed. Rule is discharged in each matter. No order as to costs.

In view of the order passed in the main petitions, all the Civil Applications are also disposed of.

[B. J. SHETHNA,J.]

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